# STATE OF MICHIGAN

# COURT OF APPEALS

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| In re RONALD J. POSLUNS and SHARON M. POSLUNS,<br><br>Plaintiffs. | UNPUBLISHED<br>July 20, 2001<br><br>No. 221123 |

Before: Wilder, P.J., and Hood and Cavanagh, JJ.

PER CURIAM.

Plaintiffs, proceeding in pro per, filed a complaint asking this Court to issue a writ of superintending control requiring the Van Buren Circuit Court to cease, desist and refrain from requiring all payments made to the county clerk for pro per fees to be paid in cash, money order, or official bank check. On December 7, 1999, this Court entered an order, pursuant to MCR 7.206(D)(3), allowing the parties to proceed to a full hearing on the merits in the same manner as an appeal of right. This Court should only issue a writ of superintending control if "the lower court failed to perform a clear legal duty." *Frederick v Presque Isle Judge*, 439 Mich 1, 15; 476 NW2d 142 (1991); See also *In re Lapeer Co Clerk*, 242 Mich App 497, 509; 619 NW2d 45 (2000). Having considered the parties' arguments, we deny plaintiffs' complaint for superintending control.

The following payment policy is in place in the Van Buren Circuit Court:

> All payments made to the county clerk for the following items must be paid in cash, money order or official bank check: Fines, Court Costs, Restitution, *All pro per case fees.* [Emphasis added.]

The parties agree that attorneys and law firms are exempted from the above payment policy and are permitted to pay case fees with either personal or business checks.

Plaintiffs argue that this payment policy is a violation of their equal protection rights because they are treated differently, as pro per litigants representing themselves, than litigants who are represented by counsel and the attorneys themselves. We disagree. While equal protection of the law is guaranteed by both the federal and Michigan Constitutions, US Const, Am XIV; Const 1963, art 1, sec 2; *Frame v Nehls*, 452 Mich 171, 183; 550 NW2d 739 (1996), the equal protection guarantee only requires persons under similar circumstances to be treated alike; it does not require persons under different circumstances to be treated the same. *Stevenson v Reese*, 239 Mich App 513, 517; 609 NW2d 195 (2000); *El Souri v Dep't of Social Services*, 429 Mich 203, 207; 414 NW2d 679 (1987).

In addition, since the disputed payment policy involves economic policy, we examine its constitutionality under the "rational basis" test. *Stegeman v Ann Arbor*, 213 Mich App 487, 492; 540 NW2d 724 (1995); see also *Yaldo v Northe Pointe Ins Co*, 457 Mich 341, 349; 578 NW2d 274 (1998). Under this test, the policy is presumed to be constitutional and is examined to determine whether it creates a classification scheme rationally related to a legitimate governmental purpose. *Vargo v Sauer*, 457 Mich 49, 60-61; 576 NW2d 656 (1998). A rational basis for legislation exists when any set of facts is known or can be reasonably conceived to justify the discrimination. *Crego v Coleman*, 463 Mich 248, 260-261; 615 NW2d 218 (2000). Thus, under the rational basis test, a "classification will stand unless it is shown to be essentially arbitrary." *Id.*

Attorneys are officers of the court, *In re Thurston*, 226 Mich App 205, 211 n 3; 574 NW2d 374 (1997), having a greater obligation to the court than pro per litigants. Attorneys may not practice law without meeting and maintaining high ethical standards, and it is professional misconduct for an attorney to engage in, among other things, dishonesty, fraud, deceit or misrepresentation. MCR 9.104; MRPC 8.4.

These rules governing the conduct of lawyers demonstrate not only that pro per litigants are not similarly situated with lawyers, but also that there is a rational reason for the circuit court policy requiring payments in cash, money order or official bank check to exempt lawyers. We recognize that both attorneys and pro per litigants face possible criminal sanctions for passing bad checks. However, lawyers also are subject to civil sanctions from the Attorney Grievance Commission that more immediately and directly affect their livelihood. In small communities which have a proportionally small number of lawyers (such as Van Buren County), the damage to an attorney's professional reputation that would result from passing bad checks to the court would be devastating. Bluntly stated, a lawyer in a small community who damages his reputation and standing with the Court in a highly public way by passing bad checks to the Court is not likely to keep or find many clients. Pro per litigants are in a different position. The Court has no method to indirectly control the conduct of the litigant, especially if the litigant is a defendant who does not wish to be a party in the first place. While pro per litigants should theoretically maintain the current address on file with the Court, in reality such litigants can be more transient and less easy to find than lawyers. The bottom line is that pro per litigants simply are not subject to the same potential and immediate sanction to their livelihood, i.e. control by the Court, for the same misconduct.

Accordingly, we find that plaintiffs fail to establish an equal protection violation because, although they are treated differently as pro per litigants from attorneys and represented litigants, they are not similarly situated and there are rational reasons for the distinction. Here, there is a rational basis for the Van Buren Circuit Court's payment policy to exempt attorneys from the requirement to make payments in cash, money order or official bank check. Because plaintiffs' equal protection argument fails, we deny plaintiff's request for issuance of a writ of superintending control.

We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Harold Hood
/s/ Mark J. Cavanagh